



State of Tennessee

TWENTIETH JUDICIAL DISTRICT

RANDY KENNEDY, JUDGE
SEVENTH CIRCUIT COURT
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TO: Members of the Probate and Estate Planning Committee Members
of the Nashville Bar Association, and

Attorneys Serving as Guardians ad Litem and Attorneys ad Litem for the Seventh Circuit Court, Nashville
and Davidson County, Tennessee

FROM: Judge Randy Kennedy, Seventh Circuit Court Judge

DATE: April, 2012

RE: Duties/Responsibilities in the Termination of Conservatorships

This letter is being submitted to all attorneys who are members of the Probate and Estate Planning Committee, the Nashville Bar Association, as well as to all attorneys who either serve as Guardians ad Litem, Attorneys ad Litem, or as Conservators in the Seventh Circuit Court.

T.C.A. § 34-3-106 reflects that the Court has an affirmative duty to conduct a hearing on the issue of disability "on demand" by respondent. Likewise, T.C.A. § 34-3-108 states in pertinent part that under Section (e) that "When . . . the Court . . . determines a conservator is no longer needed and issues an order terminating the Conservatorship, the Conservatorship shall terminate."

Although it is rare for individuals who have need for a Conservatorship to regain their capacity, thereby rendering the Conservatorship unnecessary, our Court has encountered several cases within the last few years where individuals have miraculously recovered from the condition for which the Conservatorship was created.

Consequently, I felt it appropriate to remind all of you who handle these important matters of the continuing obligation that we have as officers of the court in seeing to it that respondents' rights are preserved and protected in this complex area of the law.

I know that I can call upon all of you to be vigilant in your application of the legal principles that underlie the Conservatorship proceedings which are conducted in the Seventh Circuit Court. To that end, I have made a couple of revisions in the handout material which is utilized by our Probate Court Clerk's Office and in the Annual Status Report of the Fiduciary form which I commend to you for your reading.

These forms will be available in the Clerk's Office or on the Probate Court Clerk's website at circuitclerk.nashville.gov/probate/probateforms.asp

To that end, I remain,

Sincerely yours,

Randy Kennedy, Judge
Seventh Circuit Court

**In the Seventh Circuit Court of Davidson County, Tennessee
(Probate Division)**

ANNUAL STATUS REPORT OF THE FIDUCIARY

IN THE MATTER OF:

Docket No. _____

Respondent

I, _____ fiduciary appointed for the above-referenced Respondent state to this Court that this Respondent continues to be in need of a fiduciary due to the following mental and/or physical disabilities:

The Respondent continues to reside at the following location and the Respondent's address is:

I, the undersigned, do herewith affirm that I am aware of the Respondent's right to have a hearing on the issue of disability. I promise to notify the Court of any changes in the Respondent's mental and/or physical condition that might warrant either the modification or termination of this Conservatorship immediately, should I become aware of any improvements in the mental and/or physical condition described above.

This _____ day of _____, 20 ____.

Signature Fiduciary:

Address: _____

(This should be filed annually, even if Accountings are waived.)

Fiduciary Procedural Information
For
Conservatorships & Guardianships

For Davidson County, Seventh Circuit Court

Respondent: _____ No. 12P-_____

Inventory due on or before: _____

Annual Accountings due by: _____

PLEASE DO NOT CONTACT US FOR LEGAL ASSISTANCE, CALL YOUR ATTORNEY

Your Attorney is : _____

Attorney's Telephone Number: _____

This procedural information packet is provided to you only as a courtesy of our office as we are not required to furnish you with any information concerning the administration of this Respondent's estate. You should consult your attorney to discuss the statutory procedures which you must perform as the court-appointed Fiduciary. You should never contact the Clerk's Office to discuss legal issues involving this Respondent's estate. Asking us questions pertaining to legal matters puts us in an awkward position, because as much as we would like to help you, we are not allowed to do so. The information provided in this packet pertains to procedural matters affecting this office only.

You need to understand that there are many situations which may arise during your tenure as Fiduciary which are not discussed in this packet and therefore, we cannot warn you about ahead of time. You should always keep your attorney informed of any circumstances which may arise and require assistance.

If you are reading this, there has probably been a determination made that an individual needs someone appointed to handle their personal, medical and financial affairs. The law of the State of Tennessee then requires that a petition be filed with the Court so that the interests of these individuals are protected.

In most jurisdictions in Tennessee, it is the Court that handles probate matters that is charged with handling and monitoring the affairs for these individuals.

Upon being appointed as the Fiduciary, you will be charged and responsible for performing certain duties. You should discuss these duties with your attorney and understand them completely. If you feel there are certain issues which have not been addressed by the Court regarding your authority, you should consult your attorney.

After reading this procedural information, especially the part pertaining to the filing of Annual Accountings, you may feel overwhelmed and under the impression that this is not an appropriate position for you. Being appointed someone's Conservator or Guardian requires a detail-oriented person and if you are not a detailed individual, this position may not be something you may want to undertake.

The Hearing:

Once your petition has been filed, a court hearing before the Judge will be conducted. After your court appearance, you must appear before the Clerk to take your **Fiduciary Oath** (form available) that you will properly perform your duties as to the best of your ability. You may also have to make arrangements to secure a **Surety Bond** if the Court has ordered one. The Clerk's Office will then issue **Letters** which evidences your authority to act on behalf of the Ward.

Inventory:

Within sixty (60) days of your appointment as Fiduciary you must file an **Inventory** (form available) of the Respondent's assets, unless this duty is specifically waived by the Court. If the Inventory is not timely filed, the Clerk will mail you a Notice. A copy of the Inventory should be mailed to all interested parties of the Respondent's estate with a **Certificate of Service** (form available) attached to it. You should contact an attorney if you have questions as to what should or should not be included in the Inventory.

Annual Accountings:

Every year, within sixty (60) days of the anniversary date of your appointment as Fiduciary, you must begin filing Annual Accountings, unless this duty is specifically waived by the Court. If your Accounting is not timely filed, the Clerk's Office will mail you a Notice.

Pursuant to Tennessee Code Annotated 34-1-111 et. seg. (2011), your Annual Accounting should include the following:

1. an **Accounting Cover Sheet** (form available) indicating the balances from your accounting registers, which must be sworn to before a deputy clerk or notary public:
 - a) the balance brought forward from the last accounting period (this will be \$0.00 if this is your first accounting);
 - b) the total amount of received funds/assets during the accounting period;
 - c) the total amount of disbursements/expenditures during the accounting period;
 - d) the ending balance;
2. an **Accounting Register** (form available) which looks similar to a checkbook register. The Clerk accepts register forms prepared on various spreadsheets and those from online banking programs. Your register must include each and every receipt and disbursement from all your accounts. We would suggest you prepare separate registers for each account and post the transactions as they occur to keep you from being overwhelmed once the accounting is due. Invested funds, such as certificates of deposit, annuities, etc. may be included as a received amount on a separate register. Make copies of each certificate of deposit or the latest investment portfolio, etc. and attach it to each register for verification purposes. Gains and losses on investments should be considered appropriately as either a realized receipt (gain) or realized disbursement (loss).
3. the **financial statements** from all your depository financial institutions relating to the specific accounting period. The financial statements are necessary as many transactions are now debited and credited directly to and from your account, without the necessity of writing checks. Be sure to black out all but the last 4 digits of the account numbers on each statement and never list full account numbers on your accounting register;
4. a copy of the latest **IRS Return** or a statement that no taxes are due. Be sure to black out the social security number;

5. an **Annual Status Report of the Fiduciary**, signed by the Fiduciary, setting forth the Respondent's current physical and mental condition (form available);

6. if applicable, a **Corporate Surety Statement** that your surety bond is in force (form available) or the cancelled check indicating the latest bond premium has been paid. As fiduciary, you have the responsibility of making sure your surety bond is sufficient to cover the assets of the Respondent, therefore, you need to submit an Order adjusting the amount of your bond accordingly when your annual accounting is submitted;

7. a **Revised Property Management Plan**, if there have been changes from the previous court-approved plan (form available);

8. any and all **real property** the Respondent owns or has an interest in, should be identified and the list should be attached to the Accounting.

9. a **Certificate of Service** must be attached to the Accounting certifying that you have mailed or delivered a copy of it to all interested parties (form available);

10. all accrued **court costs** should be paid when an Accounting is filed;

You cannot file an Accounting by fax-filing it. We will have several questions to ask you about it when it is filed.

Regarding Your Fiduciary Duties:

Be sure to keep in mind your new title as Conservator or Guardian and do just that. Conserve and guard the assets of the Ward as if they were your own funds and remember that you will ultimately have to account to the Court for your actions.

As Fiduciary, you are responsible for paying all just debts of the Respondent and collecting all monies and receivables due the Respondent. You are also charged with the responsibility to appear on behalf of the Respondent or make arrangements to defend the rights of the Respondent in all respects.

You should also remember that you are being charged by the Court to properly manage the financial affairs of the Respondent, therefore, you will be held to a high degree of responsibility as you account to the Court for your actions. You may want to seek professional help when setting up your accounts and when helping to plan for the Respondent's future.

You must maintain separate accounts for the Respondent's funds and never co-mingle the Respondent's funds with your own funds (or if you are a Guardian for a minor, funds you personally give them which are not funds that are accountable to the Court).

You must never encroach upon the funds of the Respondent for any extraordinary (usually over \$1,000.00) expenditure without court approval. All expenditures must be deemed reasonable and necessary by the Court, and it may be necessary to seek court approval, unless the expenditure has already been anticipated and approved.

To help avoid questionable expenditures, be sure to keep all receipts when you make purchases on behalf of the Respondent and make sure the receipt specifically details the service provided on the Respondent's behalf and include the receipt with your accounting, especially if you believe the expenditure is not obvious to the Court. Additionally, other interested parties may request to review them.

Never use cashier's checks, or make a check payable to "Cash". Use a Debit Card only if your financial institution lists the specific name of the payee on your monthly statements and always retain the receipt.

If you are using the online banking print-out as your register, it must include transaction dates, check numbers, payees, amounts of the transactions, and you will have to hand-write in the nature of the transaction if it is not something obvious to the Court, if your bank does not allow you to "memo" the transaction. Simply copying the bank statements will not serve as a replacement for your accounting register. Most online banking services allow you to convert and print your statements as an accounting register using various software formats.

Be consistent regarding check numbers and make sure you also list voided checks on your accounting register.

Be aware of identity theft and remember that you are the ultimate overseer of the Respondent's financial affairs and take all necessary precautions to prevent fraud.

It takes approximately thirty (30) to sixty (60) days for the accounting to be reviewed and approved for recording. The accounting may be set for hearing if it contains various deficiencies.

Do not contact the Clerk's Office in order to extend the accounting period. In order to extend the period for filing an accounting, a Motion must be filed asking for an extension.

Other Items of Interest:

As To The Material Changes In The Respondent's Physical/Mental Condition: As Fiduciary, you have an affirmative duty to inform the Court of any material changes in the Ward's condition that might warrant a modification or dissolution of the Conservatorship/Guardianship. For example, if the Ward expresses to you a desire to dissolve the Conservatorship, it is your responsibility to inform the Court accordingly. If the Ward communicates a desire to modify or terminate the Conservatorship/Guardianship but has not seen a physician in an extended period of time, it is appropriate for you to have the Respondent examined by a physician with respect to the conditions for which the Conservatorship was initially obtained. If the physician informs you that the condition for which the Conservatorship was established has improved or is no longer disabling the Respondent to such an extent that the Conservatorship remains necessary, you must inform the Court immediately after which the Court will set a hearing. If you have an attorney, the attorney should be contacted by you to assist you in this matter. If you are no longer represented by counsel, this communication may be made directly with the Court at which time the Court will set the hearing on its own, by issuing an Order.

As To The Property Management Plan: As Fiduciary, you are responsible for managing the assets of the respondent to the best of your ability and judgment, always acting in the best interest of the Respondent. At the hearing, a Property Management Plan was adopted by the Court. This is to advise the Court as to the types of investments that are planned on behalf of the Respondent and details various other issues. Any changes in this plan must be approved by the Court. For example, if the plan calls for investments to be in certificates of deposit, changing from one bank to another bank for better rates does not need court approval, however, changing the type of investment, such as going from a certificate of deposit to a traded stock, would require court approval. When your Accounting is due to be filed, you may make any changes regarding the management of the Respondent's assets by filing a Revised Property Management Plan.

As To The Respondent's Real Property: As Fiduciary, you cannot make arrangements to sell any real property without court approval. To do so, your attorney must file the proper petition and the Court, in its discretion, may appoint a Guardian ad litem to investigate any sale of real property. This is a process that may take several weeks.

As To The Respondent's Personal Property: As Fiduciary, you should seek legal advice before any personal property is sold or discarded. Neither you, any relative, your attorney, the guardian ad litem, nor any other close acquaintance of the Respondent, may purchase the property of the Respondent without specific court approval, thus avoiding any conflict of interest.

As To Encroachments: Should you ever have to encroach upon the funds or assets of the Respondent for anything other than what is already approved by the Court, you must first petition the Court to allow for the encroachment. You should keep in mind that it is your duty to try and preserve the assets of the Respondent and not to allow for various unnecessary expenses regarding the care and maintenance of the Respondent.

As To Investments: As Fiduciary, you should understand that your basic function is not making money for the Respondent, but rather working toward "conserving" the assets.

As To Your Final Settlement: As Conservator, upon the death or restoration of rights of the Respondent, or as Guardian, upon the reaching of the age of majority of the Respondent, you must prepare and file a Final Settlement as to your fiduciary accounts. A Final Settlement may be waived if the Court previously waived the Annual Accountings.

As To Your Removal As Fiduciary: Be aware of the fact that you can be removed as the Fiduciary at any time the Court determines that you are not properly performing your duties. Should you ever wish to resign as Fiduciary, you must first file the proper petition with the Clerk, a court hearing will be set, and you must prepare and file a Final Settlement as to your accounts.

As To Court Costs: Court costs are due and payable at the time any pleadings or other court documents are filed. Court costs are subject to change without notice and are determined by statute, not by the Clerk. Court costs will continue to accrue while the matter remains open. It is expected that all accrued court costs will be paid at the time of your Annual Accounting.

As To Statutory and Court-Ordered Deadlines: It is very important for you to realize that this office is charged with continually monitoring its cases. Failure to timely perform some of these duties, may result in Notices and Citations to Appear being either mailed or served on you. The Court may also issue an Order for Show Cause for you to appear for failure to perform your duties. Failure to properly account for the assets to which you have been charged, may also result in the Court ordering a judgment against you for the value of the assets, making you personally responsible. The court costs for these procedures may also be assessed against you.

As To Other Issues: Be advised that there are many issues related to your duties as Fiduciary which cannot be fully detailed in this procedural guide. Even though you may consider the information we have provided in this guide to be quite substantial, there is an enormous amount of information and issues, both legal and non-legal, which are not discussed here.

As To Other Duties: Remember that all documents should be photo-copied and mailed or delivered to all interested parties of this matter as they are filed in our office. All correspondence with our office should be in writing and must include the docket number. You must notify this office of any and all address changes. Our mailing address is as follows:

Probate Court Clerk
Third Floor, Room 303
Metropolitan Davidson County Courthouse
One Public Square
Nashville, TN 37201
(615) 862-5980

Our website is located at
<http://circuitclerk.nashville.gov/probate>